

# Exhibit

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## Tolling and Standstill Agreement

WHEREAS Wayne Berry (“Berry”) has asserted certain rights in intellectual property;

WHEREAS Deutsche Bank Trust Company Americas and JPMorgan Chase Bank (hereinafter the “Agents”) were the agents under certain pre and post-petition loan obligations related to Fleming Companies, Inc., and various of its subsidiaries and affiliates (“Fleming”);

WHEREAS Berry alleges that Agents and the other entities listed on the attached Exhibit “A” (such entities referred to as the “Lenders”) are liable to Berry for certain remedies under the Copyright Act, 17 U.S.C.. The Agents and the Lenders deny all such allegations, claims and liabilities related to Berry;

WHEREAS Berry, the Agents and the Lenders (hereinafter the “Parties”) desire to avoid litigation and in consideration for the mutual covenants contained herein do hereby manifest their assent to this Tolling and Standstill Agreement (hereinafter “Agreement) under its terms as follows:

- A. The Agents on their own behalf and on behalf of the Lenders listed on Exhibit “A” agree that the statute of limitations contained in the Copyright Act, 17 U.S.C. § 507(b) that provides that “[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued,” shall be tolled during the Effective Period as defined below. Berry agrees that any limitation period applicable to any claim or counterclaim that the Agents or the Lenders may have against Berry shall also be tolled during the Effective Period.
- B. Berry agrees not to sue the Agents or any of the Lenders listed on Exhibit “A” during the Effective Period of this Agreement except as set forth herein. The Agents agree not to sue Mr. Berry during the Effective Period of this Agreement except as set forth herein.
- C. The Parties agree that the Effective Date of this Agreement shall be March 30, 2006.
- D. The “Effective Period” shall be defined as the period from the Effective Date until 30 days after a Party gives notice of termination pursuant to paragraph E hereof or on March 30, 2007, whichever comes sooner.
- E. Any Party may give notice of termination of this Agreement at any time for any or no reason.
- F. Upon receipt of such notice of termination, any Party shall have 30 days within which to commence suit provided that in the event Berry commences suit, the Agents and Lenders will have all time contemplated by applicable rules to assert counterclaims.
- G. Should the matter not be resolved within 11 months of the Effective Date, the Parties agree that no further notice of termination need be given and the Agreement will expire by its terms on March 30, 2007.

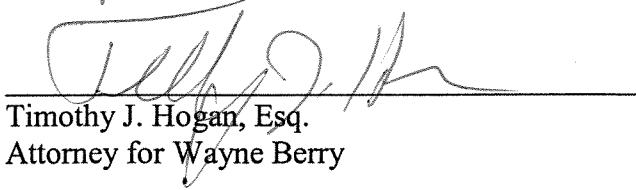
- H. The Parties and the Lenders make no admission of any liability or waiver of any claim and this Agreement shall not be used as any evidence to establish venue or jurisdiction of any court or tribunal. Neither this Agreement nor its contents shall be admissible as evidence in any court, legal proceeding, administrative, or alternative dispute resolution proceedings, except as to the issue of the tolling of the limitations period referenced in paragraph A hereof. To the extent that a limitations period passed prior to the Effective Date, this Agreement may not be utilized to assert that such period was otherwise tolled.
- I. This Agreement may be executed in counterparts and through facsimile signatures of the attorneys for the Parties, each of whom warrants their authority to act on behalf of their clients in this matter.
- J. This Agreement shall be interpreted under the law of the State of New York.
- K. No interpretation of this agreement shall give any weight to the fact that one party was the drafter of the Agreement.
- L. Notices shall be by Express Mail or other similar means of express delivery and by contemporaneous Fax to the Parties as follows:

Wayne Berry  
in care of his counsel  
LYNCH ICHIDA THOMPSON KIM & HIROTA  
Attention: Timothy J. Hogan, Esq.  
1132 Bishop Street, Suite 1405  
Honolulu, Hawaii 96813  
VIA FAX (808)528-4997

The Agents (and on behalf of the Lenders)  
in care of their counsel  
WHITE & CASE LLP  
Attention: Andrew P. DeNatale, Esq.  
1155 Avenue of the Americas  
New York, New York 10036 2787  
VIA FAX (212) 354-8113

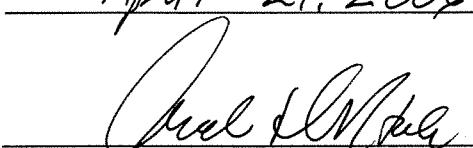
Dated: Honolulu, Hawaii

April 27, 2006

  
Timothy J. Hogan, Esq.  
Attorney for Wayne Berry

Dated: New York, New York

April 21, 2006

  
Andrew P. DeNatale, Esq.  
Attorney for The Agents

**Exhibit A**

Ameriprise Certificate Company	KZH Highland-2 LLC
Bank of America, N.A.	Long Lane Master Trust II
Bear Stearns	Long Lane Master Trust IV
Big Sky Senior Loan Fund, Ltd.	Manufacturers and Traders Trust Company
Blue Square Funding Limited Series 3	Maplewood (Cayman) Limited
Bryn Mawr CLO Ltd.	Massachusetts Mutual Life Insurance
California Public Employees' Retirement System	Company
Carlyle High Yield Partners IV, Ltd.	Mizuho Corporate Bank, Ltd. (successor to The Fuji Bank, Limited)
Carlyle High Yield Partners, L.P.	Mountain Capital CLO I Ltd.
Centurion CDO VI, Ltd	Mountain Capital CLO II Ltd.
Citi – Long Lane Master II	Muirfield Trading (a/k/a Castle Harbor CLO Limited)
Citigroup Investments Corporate Loan Fund	Muirfield Trading LLC
Clydesdale CLO 2001-1, Ltd.	Natexis Banques Populaires
Columbus Loan Funding, Ltd.	Nomura Bond & Loan Fund
Costantinus Eaton Vance CDO V, Ltd.	Olympic Funding Trust
Denali Capital CLO I, Ltd.	Oxford Strategic Income Fund
Denali Capital CLO II, Ltd.	Pam Capital Funding L.P.
Deutsche Bank Trust Company Americas	PPM Shadow Creek Funding LLC
Diamond Springs Trading LLC	Restoration Funding CLO, Ltd.
Eaton Vance CDO III, Ltd.	Riveria Funding LLC
Eaton Vance CDO IV, Ltd.	Rosemont CLO, Ltd.
Eaton Vance Institutional Senior Loan Fund	RZB Finance LLC
Eaton Vance Senior Income Trust	Senior Debt Portfolio
Eaton Vance VT Floating-Rate Income Fund	Sequils-Centurion V, Ltd
ELF Funding Trust I	SEQUILS-Cumberland I, Ltd.
Emerald Orchard Limited	Siemens Financial Services, Inc.
Glenegales Trading LLC	Stanwich Loan Funding LLC
Goldman Sachs Credit Partners L.P.	Suffield CLO, Limited
Grayson & Co	The CIT Group/Business Credit, Inc.
Guaranty Bank (f/k/a Guaranty Federal Bank)	Wachovia Bank, National Association
Harbour Town Funding LLC	Winged Foot Funding Trust
Highland Legacy Limited	
Highland Loan Funding V Ltd.	
IDS Life Insurance Company	
JPMorgan Chase Bank	
Jupiter Loan Funding LLC	